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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,191	06/03/2002	Romuald Pawluczyk	32528	2915

7590 05/21/2003

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EXAMINER

WINAKUR, ERIC FRANK

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 05/21/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/070,191

Applicant(s)

PAWLUCZYK ET AL.

Examiner

Eric F Winakur

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2 - 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claim 2, the scope of the claimed subject matter is unclear as claim 1 appears to be drawn to a subcombination (measuring device) while dependent claim 2 appears to claim a combination (measuring device and external power source); the subject matter should either be drawn to a combination or subcombination throughout the chain of dependency. With regard to claim 3, the scope of the claimed subject matter is unclear as claim 1 appears to be drawn to a subcombination (measuring device) while dependent claim 3 appears to claim a combination (measuring device and external computer); the subject matter should either be drawn to a combination or subcombination throughout the chain of dependency. Further, in claim 3, the phrase "such said" is unclear.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1 - 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of Cherry et al. Robinson teach a non-invasive optical measurement device that includes broad spectrum, near infrared emitters, a receiver for receiving a part of a subject for being illuminated by the emitters, a light receptor for receiving light that has interacted with the subject's tissue, a wavelength dispersion element, a photodetector, and processing and power sources (see columns 14 - 25). However, Robinson does not teach or suggest that the device is connectable through a communications interface to an external computer or through a power interface to an external power source. Cherry et al. teach a modular physiological computer-recorder that allows measurement systems to be constructed from "plug and play" elements. Such an arrangement allows added flexibility when designing and implementing the measurement system. The system of Cherry et al. includes communications and power interfaces to provide necessary connections between the sensor, the processor/controller, and the power supply. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Robinson to use a modular component arrangement as taught by Cherry et al., since this allows added flexibility in designing and implementing measurement systems.

5. Claims 9 - 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of Cherry et al. as applied to claims 1 - 8 above, and further in view of Parker and Yasuda et al. The combination includes a finger receptacle for receiving a subject's finger during measurement (see Robinson, Figs. 32-37), but does not teach details of a housing for receiving and supporting the subject's hand. Parker (Figs. 5 - 9)

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teaches an alternate optical measurement system that includes a finger receptacle and a hand receiving portion. Yasuda et al. (Figs. 4, 8) teach a finger and hand receiver for an optical measurement system that includes adjustable portions for receiving and reliably placing the subject's hand in relationship to the sensor. As a subject's finger would necessarily be attached to a hand, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the finger receptacle of the combination of Robinson and Cherry et al. to include a hand support portion, as taught by Parker, since this would provide added comfort for the subject and allow more reproducible hand placement for testing. Further, it would have been obvious to provide adjustable receiver elements, as taught by Yasuda et al., since this would make the device useable with a variety of subjects with different hand and finger sizes. Also, it would have been within the skill level of the art to provide a cover shaped to allow easy entry during use of the device by the subject, since it is well known to provide covers on electronic devices for providing protection to the device during use and storage; in an optical measurement system, the cover provides additional ambient light blockage.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F Winakur whose telephone number is 703/308-3940. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 703/308-3130. The fax phone numbers for the organization where this application or proceeding is assigned are 703/305-3590 for regular communications and 703/305-3590 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/308-0858.

A handwritten signature in black ink, appearing to read 'E. Winakur'.

Eric F Winakur  
Primary Examiner  
Art Unit 3736

May 19, 2003